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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

)  
)  
) GEN Docket No. 90-314  
)  
)

**REPLY TO OPPOSITIONS**  
**TO PETITIONS FOR RECONSIDERATION**

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**INTRODUCTION**

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.429 of the Federal Communications Commission's (the "Commission") Rules, hereby submits its Reply to Oppositions to Petitions for Reconsideration of the Commission's Second Report and Order ("Order") in the captioned docket.<sup>1</sup> The Order established spectrum allocations, service areas, service rules and technical requirements for the provision of Personal Communications Services ("PCS"). Reconsideration has been sought on nearly every aspect of the Commission's decision.

Nextel's Specialized Mobile Radio ("SMR") systems provide mobile communications services to approximately 200,000 mobile units on a daily basis on both 800 MHz and 900 MHz SMR systems. Nextel conceptualized and is now implementing Enhanced Specialized Mobile Radio ("ESMR") systems that utilize digital speech coding, Time Division

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<sup>1</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700 (1993).

Multiple Access ("TDMA") transmission and frequency reuse to yield up to 50 times the capacity of its existing SMR systems.

Nextel has participated in every stage of this proceeding, and has consistently urged the Commission to establish a PCS regulatory framework that will promote competition, provide incentives for efficient use of spectrum, and foster creation of new services to meet the diverse communications needs of the American public.

**I. LARGE SPECTRUM BLOCKS, OVERSIZED MARKETS, AND HIGH POWER LEVELS WILL INHIBIT DEVELOPMENT OF A RICH AND DIVERSE FAMILY OF PERSONAL COMMUNICATIONS SERVICES.**

**A. The Commission Should License PCS in Four 20 MHz Blocks and Four 10 MHz Blocks.**

In the Order the Commission adopted an expansive definition of PCS, and in so doing affirmed a forward-looking concept of PCS as a diverse family of mobile or portable communications services serving the requirements of people on the move.<sup>2</sup> The progressive vision of a new service in which creativity and innovation will flourish was in large measure undercut, however, by the Commission's decision to award two 30 MHz PCS licenses in each Major Trading Area ("MTA").

The unprecedentedly-large 30 MHz licenses will encourage inefficient use of spectrum and are therefore

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<sup>2</sup> Order at 7709-7710; see also Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676 (1992) ("NPRM").

inconsistent with the public interest in conserving this scarce and valuable resource. Furthermore, the record in this proceeding does not demonstrate that 30 MHz of spectrum are required for any proposed PCS application. The record does show that 10 MHz can support viable and competitive PCS services. For these reasons, Nextel, in its Petition for Reconsideration, recommended that the Commission revise its plan so as to license broadband PCS in four 20 MHz blocks and four 10 MHz blocks.<sup>3</sup>

In their Oppositions, American Personal Communications ("APC") and several others defend the 30 MHz MTA licenses.<sup>4</sup> APC characterizes Nextel's recommendations as a "classic case of second generation child abuse" seeking to victimize others as it has been victimized in the past.<sup>5</sup> On the contrary, Nextel's success in using advanced technology to provide high-quality mobile services in small blocks of encumbered spectrum proves that PCS licensees will not be victimized by an allocation plan that precludes waste of valuable spectrum. They will be challenged; and as they

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<sup>3</sup> Petition of Nextel at 5-11. The Cellular Telecommunications Industry Association ("CTIA") made an essentially identical proposal. Petition of CTIA at 1-11. Several other parties proposed either uniform 20 MHz allocations, see, e.g., Petition of Bell Atlantic at 10-13, or uniform 10 MHz allocations, see Petition of George Murray at 4-10.

<sup>4</sup> No party, however, supports Time Warner's petition seeking even larger 40 MHz allocations. See Petition of Time Warner at 5-8.

<sup>5</sup> Opposition of APC at 2.

meet that challenge they will spur the development and deployment of whole new generations of spectrally-efficient digital communications technologies.

APC and others continue to argue that 30 MHz licenses should be awarded because 20 MHz licenses are too small to share with incumbent fixed microwave operators during the three-year period allowed for their relocation. The long-term structure of the PCS market should not, however, be designed around this short-term problem, for which technical solutions do exist.

SMR operators must share relatively small amounts of spectrum with numerous other land mobile licensees. Nextel's ESMR systems show that it is possible to use advanced, frequency-agile Digital Mobile technology to provide seamless service over wide areas in the most frequency-congested environments. APC is wrong to discount Nextel's experience on the grounds that SMR operators share spectrum with other SMR systems rather than with fixed microwave users. What Nextel does is much more difficult, since it must constantly avoid interference not only with SMR base stations but with thousands of mobile units that constantly change location and that operate on frequencies dispersed throughout the shared spectrum band.

APC posits that 20 MHz licenses will not support competition to the wired local loop and that greater bandwidth is needed for high speed data services. In some

markets demand could warrant devoting large amounts of PCS spectrum to these applications. It does not follow, however, that large spectrum blocks must be licensed in all markets. Under Nextel's proposal, the desired bandwidth could readily be assembled where it is needed by aggregating smaller spectrum blocks. Where there is no demand for spectrum-intensive services, the smaller license blocks would still be available for licensees to develop other services more suited to local needs.

The Commission recently awarded APC a 30 MHz PCS license for the entire Baltimore/Washington MTA, allegedly based on APC's innovative PCS experiments and system designs.<sup>6</sup> With this unprecedented spectrum award and start-up advantage, the public should expect APC to offer a rich diversity of unique new mobile communications capabilities. This does not appear to be the case. In a presentation just this week, APC stated that it will implement PCS in the Baltimore/Washington market with existing GSM architecture using a three-to-five mile site plan.<sup>7</sup> This demonstrates that APC is not going to introduce new PCS technologies or services derived from its "award-winning" experiments, belies its need for more than 10 MHz of PCS spectrum and confirms the fallacy that the

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<sup>6</sup> See News Release, Report No. DC-2553, released December 23, 1993.

<sup>7</sup> Presentation of APC at Telocator PCS Conference in Washington, D.C., January 11, 1994.

pioneer's preference process will bring innovative services to the public. APC is using its pioneer's preference to rush "clone" services to market.

**B. Reducing the Size of PCS Service Areas Will Promote a Diverse, Competitive Marketplace for PCS Services.**

To promote competition and the creation of services that meet local needs, Nextel recommended in its Petition for Reconsideration that the Commission substitute BTAs for MTAs as the geographic service area for all licenses. APC, which has already been awarded a 30 MHz license for the entire Washington, D.C. MTA, understandably seeks to defend the Commission's choice of these oversized markets. APC points to the combination of smaller cellular license areas into regional cellular systems the size of MTAs as evidence that large MTA markets should be used from the beginning for PCS.

Thoughtful consideration of APC's argument, however, should lead the Commission to the opposite conclusion. Cellular started with small markets, which were combined over time in response to the demands of commerce. The configuration of the market for each of the anticipated diverse family of PCS services should similarly be determined as much as possible in the marketplace. Substituting BTA for MTA licenses will facilitate this process.

**C. PCS Does Not Require Higher Maximum Power Levels.**

The Commission should stand by its original determination that base station power levels comparable to those allowed in the cellular service are not necessary or desirable for PCS.<sup>8</sup> The level chosen, 100 watts (e.i.r.p.), was set well above levels demonstrated on the record to be accommodate most experimental PCS systems, and provides sufficient flexibility for the development of a variety of microcellular PCS systems serving local needs. Higher power levels will serve only to encourage those who seek to duplicate the cellular service in the PCS band, and to thereby discourage the development of new PCS services.

Furthermore, the effects of higher power 2 GHz systems on microwave incumbents, on computer equipment, and on other PCS systems are still being investigated. Narrow beam antennas with high input power can create "hot spots" through terrain effects or reflections, causing disruptions not only in distant cells but also in computers and other equipment sensitive to microwave radiation. Increasing the power of a PCS system also increases the likelihood that it will interfere with adjacent lower power PCS operations. Given these risks, any increase in the maximum power levels for PCS base stations would be premature.

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<sup>8</sup> See Order at 7763-7764.



**II. PCS ELIGIBILITY RESTRICTIONS FOR ESMR OPERATORS ARE OUTSIDE THE SCOPE OF THE NOTICE GIVEN IN THIS PROCEEDING.**

In its Opposition, the Association of Independent Designated Entities ("AIDE") asks that the Commission impose on ESMR operators the same PCS eligibility limitations that it adopted for cellular licensees. Telephone and Data Systems, Inc. ("TDS") states that it prefers that the Commission remove the eligibility limitations on cellular operators, but that "regulatory parity" requires applying the restriction to ESMR if it is retained for cellular.

As a matter of administrative law, these proposals must be rejected as being outside the scope of the notice that was given in this rulemaking proceeding.<sup>9</sup> Section 553(b) of the Administrative Procedures Act requires that notice of proposed rulemaking include "either the terms or substance of [a] proposed rule or a description of the subjects and issues involved."<sup>10</sup> The notice must be specific and must adequately apprise interested parties of the issues involved.<sup>11</sup>

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<sup>9</sup> See Opposition of Nextel at 3-10.

<sup>10</sup> 5 U.S.C.A. §553(b)(3).

<sup>11</sup> See 5 U.S.C. § 553(b)(3); S. Report No. 752, 79th Cong., 1st Sess. 14 (1945) ("Agency notice must be sufficient to fairly apprise interested parties of the issues involved."); United States v. Florida East Coast R. Co., 410 U.S. 224, 243 (1973); Anne Arundel County v. EPA, 963 F.2d 412, 418 (D.C. Cir. 1992); American Medical Association v. U.S., 887 F.2d 760, 767-68 (7th Cir. 1989); Kollett v. Harris, 619 F.2d 134, 144 & n.13 (1st Cir. 1980); American Iron and Steel Institute v. EPA, 568 F.2d 284, 293

The NPRM proposed a rule prohibiting local exchange carriers ("LECs") and cellular operators from holding co-located PCS licenses.<sup>12</sup> The discussion focused exclusively on the dangers and benefits of cellular and LEC participation in PCS.<sup>13</sup> The Commission did not even seek comment on extension of the proposed cellular eligibility restrictions to any other potential PCS licensees. Because an interested person reading the NPRM could not have been apprised that restrictions on SMR licensees might be considered, such restrictions are outside the scope of the notice given in this proceeding and cannot be adopted on reconsideration.

There is, moreover, no public policy rationale for applying to ESMR licensees the same PCS eligibility restrictions that apply to cellular operators. The Commission limited entrenched cellular licensees, who already have 25 MHz of unencumbered spectrum at their disposal, to 10 MHz of co-located PCS spectrum out of concern that an incumbent cellular operator might exert undue market power.<sup>14</sup> This rationale does not support

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(3rd Cir. 1977); Baylson v. Disciplinary Bd. of the Supreme Court of Pennsylvania, 764 F. Supp. 328, 334 (E.D. Pa. 1991), aff'd 975 F.2d 102 (3rd Cir. 1992).

<sup>12</sup> NPRM, 7 FCC Rcd at 5751 (Proposed Section 99.13).

<sup>13</sup> Id. at 5701-5707.

<sup>14</sup> Order at 7745.

imposing the same limitation on new entrant ESMR providers, who have only 10 MHz of shared SMR spectrum and no market share.<sup>15</sup>

**CONCLUSION**

Proposals for licensing PCS in large spectrum blocks, large markets, and at higher power levels do not serve the public interest. Smaller spectrum blocks will spur development of spectrally-efficient technologies and conserve for the future a scarce public resource. The power levels adopted in the Commission's order provide sufficient flexibility for the development of a variety of PCS services. Proposals to impose PCS eligibility restrictions on SMR/ESMR licensees must be rejected as outside the scope of the notice given in this proceeding.

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<sup>15</sup>Nor does "regulatory parity" require imposition of identical PCS eligibility restrictions on ESMR and cellular providers. See Opposition of Nextel at 6-8.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing "Reply to Oppositions to Petitions for Reconsideration" was served by first class mail, postage prepaid, this 13th day of January, 1994, to the following:

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